**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: EA/01499/2016**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 5 December 2017** | **On 25 January 2018** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEVER**

**Between**

**SHAMSHAD KAUSAR**
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Hussain, Legal Representative of Syeds Solicitors
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant born on 16th February 1963 is a citizen of Pakistan. She was represented by Mr Hussain. The Respondent was represented by Ms Willocks-Briscoe, a Presenting Officer.

**Substantive Issues under Appeal**

2. The Appellant had made application under the Immigration (EEA) Regulations 2006 to come to the United Kingdom as a dependent family member of an EEA national or spouse. The application had been refused on 8th January 2016. The Appellant had

appealed that decision and her appeal was heard by First-tier Tribunal Judge Lodge sitting at Birmingham on 7th March 2017. The judge had allowed her appeal under the 2006 Regulations.

3. The Respondent had made application for permission to appeal on the basis in summary that findings made by the judge were contradictory to the conclusions that he drew allowing the appeal. Permission to appeal was granted by First-tier Tribunal Gillespie on 15th September 2017 where it was said that arguably the judge had failed to consider whether the purported dependency of the Appellant was genuine and in any event failed to give any or any adequate reasons why the several indications of deception ought not to be seen as fatally undermining the claim of a genuine dependency. By a letter dated 16th November 2017 the Appellant's representatives had provided a Rule 24 response to the Grounds of Appeal including the Appellant's visit visa application of 2013, the refusal of such application in 2013 and the decision of First-tier Tribunal Judge Mailer promulgated on 16th October 2017 in respect of the Appellant's husband's application for recognition as a dependent relative under the same 2006 Regulations.

**Submissions on Behalf of the Respondent**

4. Submissions were made in terms of the grounds within the application namely that significant concerns had been raised by the judge on evidence and credibility in his decision, such that the judge had clearly concluded that the evidence had been generated to show dependency rather than a genuine dependency and no adequate reasons had been given for his final conclusions.

**Submissions on Behalf of the Appellant**

5. It was submitted that the judge had found against the Appellant but without the benefit of the visit visa application and the decision of the ECO in 2013 and referred me to the documents within the Rule 24 application. It was submitted the Respondent had failed to show that the Appellant had given false evidence at the time of her visit visa application and that the Respondent was wrong in continuing to assert there was any falsity or subterfuge in the case and that in any event the judge had given reasons for his final decision.

6. At the conclusion of the submissions I reserved my decision to consider all matters. I now provide that decision with my reasons.

**Decision and Reasons**

7. The Appellant's application was to come to the UK as a family member dependent on an EEA national or spouse under Regulation 7 of the Immigration (EEA) Regulations 2006.

8. The case of **Lim (EEA dependency) [2013] UKUT 00437** deals with the issue of dependency and was referred to the judge. At paragraph 20 of that case the Upper Tribunal said:

> "The jurisprudence of the Court of Justice clearly emphasises that assessment of dependency must take into account the personal situation of the applicant, which might be thought to entail that dependency cannot simply be deduced from the mere fact of receipt of financial support by an EEA national or spouse. This aspect of the jurisprudence might be said to be reinforced by the formulation given by the Court of Justice in **Jia** when it says that dependency must be interpreted as meaning that proof of the need for material support is required".

9. At paragraph 21 of the case it was noted that the overriding principle established was that dependency is a matter of fact and reasons are irrelevant. At paragraph 22 it was noted "The only qualification that the Court of Justice has ever made to this principle is that there must not be an abuse of rights".

10. The judge had considered the evidence before him and made a number of findings of fact at paragraphs 18 to 25. He then concluded in these terms at paragraph 26:

> "Notwithstanding that parts of the Appellant's evidence are unreliable I am satisfied on the documentary evidence that she is receiving regular financial remittances from her son. In the circumstances I am driven to conclude that she is dependent upon the Sponsor and is accordingly a dependent parent".

11. The judge appears to conflate receipt of financial remittances with dependency and the use of the term "I am driven to conclude" suggests he believed that the former (receipt of remittances) inevitably led to the latter (the conclusion of dependency). It seems clear from the Court of Justice jurisprudence referred to above that dependency cannot be deduced simply from the receipt of financial remittances and to that extent the judge erred in assuming that one led directly and uncontrovertibly to the other.

12. The question is whether that error was material. Had the judge made a series of clear factual findings that set out the personal situation of the Appellant commensurate with her being dependent then the above error would not be material because the judge would by necessity have made the same decision. However the findings made by the judge in this case are significantly short of that mark. At paragraphs 18/19 he found that the Appellant had employed subterfuge in respect of assertions made on a visit visa application in 2013 namely that her husband was in Pakistan when he was in the UK, that he had entered the UK on a false passport and that she had misled the Home Office as to his status in the UK. Whilst the Representative had argued such factors were not relevant the judge had correctly concluded he was entitled to have regard to that matter. That is in accordance with a fundamental principle laid down by the Court of Justice in these cases as noted at paragraph 25 of **Lim** "the only qualification that the Court of Justice has ever made to this principle is that there must not be an abuse of rights".

13. At paragraph 20 he refers to the evidence of money transfers and receipt of those transfers. At paragraph 21 he referred to evidence of the Sponsor paying the Appellant's household bills. He clearly found that evidence less than credible and concluded "the only point I can see is in having Mr Ikram's name on the bills is to

generate evidence of dependency". At paragraph 22 he refers to evidence suggesting the Appellant's husband had sold the house in Pakistan and that the Sponsor needed to pay the rent now existing on that home for the Appellant and her two children to remain living there. He said "I am satisfied that that is evidentially worthless". He further concluded:

> "I cannot accept that the Appellant's husband would leave her and her children in the position of having to find monies to pay rent upon the house which presumably they have been owners of for some time. The letter has all the hallmarks of being contrived to advance the Appellant's claim".

At paragraphs 23 and 24 he referred to a letter indicating the Sponsor paid the medical bills and that the Sponsor and Appellant went on pilgrimage to Saudi Arabia together in 2013 (that does not appear to have any real relevance to the features in this case). Finally at paragraph 25 he found that the amounts remitted to the Appellant (£400 to £700 monthly) was a very substantial sum given the Sponsor's income of £8,000 per annum. He does not appear to have drawn any further conclusions from those observations.

14. In summary, in the relatively short paragraphs of assessment of evidence the judge had clearly found more than one example of deception perpetrated by the Appellant and found core features of the evidence relating to dependency i.e. household bills and property rent to be lacking credibility and essentially, as said on more than one occasion, a contrivance to advance the Appellant's claims. Those finding clearly suggest the judge believed that deception or an abuse of rights may have been perpetrated but nevertheless erroneously believed he was bound to find in favour simply because financial remittances had been made.

15. The Appellant's representatives had introduced fresh evidence before me in accordance with Rule 24 essentially to demonstrate that the judge was wrong to conclude at paragraphs 18/19 that the Appellant had employed subterfuge. The documents before me under Rule 24 were not before the Judge of the First-tier Tribunal. The representative's position can be summarised by their comments at paragraph 3 of the covering letter to the Rule 24 application "it is concerning to see that the Respondent continues to mislead the court in thinking that Ms Kausar's husband was in the UK while she was attempting to obtain a visit visa claiming to be dependent upon her husband". That relates to the visit visa application in 2013 and referred to at paragraphs 18 and 19 of the judge's decision. In support of this assertion and generally the representatives placed in evidence under Rule 24:

    (a) The Appellant's visit visa application dated 16th March 2013.

    (b) The Entry Clearance Officer's refusal decision 26th March 2013.

    (c) First-tier Tribunal appeal decision by Judge Mailer promulgated on 16th October 2017 relating to a dependency appeal made by this Appellant's husband.

16. Clearly this evidence, in particular the decision of Judge Mailer made on 16th October 2017 was not before the First-tier Tribunal Judge who made his decision in March

2017. There is no evidence within the decision of Judge Mailer to show that he had been given a copy of the decision of Judge Lodge or necessarily knew anything about the application and appeal process relating to Ms Kauser, the wife of the Appellant before him.

17. The common denominator in evidential terms between the two appeal hearings was the Sponsor son in the UK. He was the only witness so far as I can see in both cases. The Appellant's visa application made in March 2013 indicated an intention to visit the UK in June 2013. The Appellant, Ms Kauser, indicated that her husband would pay for her visit to the UK and the 150,000 rupees was available for that purpose. She referred to her husband and herself having a property worth 1,32,19,100 rupees. The case was that her husband was in Pakistan and either directly or by inference that she was dependent upon him.

18. The Sponsor son's evidence in respect of the hearing before Judge Mailer relating to the father's case revealed the following evidence. The Appellant father had entered the UK illegally (consistent with paragraph 18 Judge Lodge's decision). The Sponsor son claimed his father had been living with him since arrival in the UK and at paragraph 16 of the decision it was noted that he had been with the son at an address in Eastleigh since April 2013. He further claimed that his father had been a dependant when he had lived in Canada prior to coming to the UK (paragraph 13). He further claimed that his father had never worked in Pakistan, brought no savings with him and had no income.

19. That evidence needs to be contrasted with his evidence before Judge Lodge where at paragraph 11 he had said his father's business in Pakistan was not working out which is why he had to sell the home and invest money. He also said his father had come from Canada to the UK (paragraph 8).

20. In his witness statement in the Appellant's bundle before Judge Lodge the Sponsor son had asserted at paragraph 4:

    (a) My father was in Pakistan at the time of my mother's visit visa application.

    (b) My father did indeed enter the UK but that was way after my mother's application.

21. In summary therefore the Rule 24 additional evidence, rather than clarify matters or indeed demonstrating, as no doubt hoped, that the Home Office were wrong to suggest the Appellant had made misleading assertions in her 2013 application, and Judge Lodge had erred in his findings at paragraph 18/19, demonstrates something rather different. The Appellant in her 2013 application made in March 2013 for an anticipated visit in June 2013 said her husband was in Pakistan, had 150,000 rupees available to her and that they owned a property of some value.

22. The Sponsor son in summary had asserted before Judge Mailer in evidence in October 2017:

    (a) His father had never worked in Pakistan.

(b) His father had lived in Canada before coming to the UK.

(c) His father had lived with him since arrival in the UK as far back as at least April 2013 when they lived at Eastleigh.

(d) His father entered the UK illegally.

(e) His father brought no savings with him.

23. The Sponsor son in his evidence before Judge Lodge said:

(a) His father came from Canada before arrival in the UK.

(b) His father's business was not doing well and had sold the house to invest the money. In his witness statement the son had said at paragraph 4 "my father is currently present in the UK and this shows that he did indeed enter the country but this was way after my mother's application".

24. The Rule 24 evidence shows at the very least inconsistency in evidence provided by the Sponsor son in the case before Judge Lodge and the case before Judge Mailer. His evidence supports the fact that the Appellant's husband was at the time of her visit visa application either in Canada or in the UK and at the very least had entered the UK almost contemporaneous with her application. His evidence would indicate that the Appellant's husband did not have monies available for the Appellant given his assertions either that his father had never worked or alternatively his business was not doing well and he had no savings.

25. To that extent the additional evidence served under Rule 24 does not show anything unreliable in the assertions made by the Home Office and the matters thereafter considered by Judge Lodge at paragraphs 18 and 19 of his decision. He was entitled to make the findings that he did at paragraph 19 additional to the findings that he made, and referred to above, in respect of the other core features of the Appellant's case. It does not seem to me likely that had Judge Lodge been in possession of the additional evidence served under Rule 24 that it would have assisted him in reaching findings on credibility favourable to the Appellant. On the face of it the evidence of the Sponsor son, central to both separate appeal hearings in respect of the Appellant's mother and father, would appear to demonstrate a worryingly inconsistent pattern of evidence that would seem to require close scrutiny. I do not find therefore that the Rule 24 evidence supports submissions made by the Appellant's representatives nor leads me to conclude that assertions made by the Home Office and potentially adopted by Judge Lodge were made in error or were misleading.

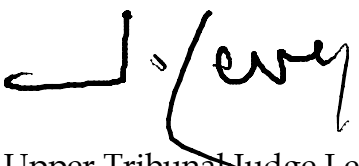
26. I find for reasons given above that Judge Lodge had made clear findings that he did not accept as credible core features of the Appellant's factual case and additionally that she had employed subterfuge and he was correct to identify that as relevant (although not necessarily an overriding factor). He reached the conclusions he did based on an erroneous belief that evidence of remittances equated to a finding of dependency. He misdirected himself in that respect and his factual findings, such as

they were, and the comments that he made in relation to those findings, are it seems inconsistent with the conclusion that he reached. Accordingly, had he not misdirected himself, he may well have reached a different conclusion consistent with the findings and comments that he had made in previous paragraphs. As indicated above the Rule 24 material, rather than supporting the argument of the Appellant's representatives, would seem to undermine the credibility and consistency of the Sponsor in this and the other case, such that fears of an abuse of rights is perhaps strengthened rather than weakened.

**Notice of Decision**

27. I find a material error of law was made by the First-tier Tribunal Judge in this case such that the matter needs to be heard afresh and given that there needs to be a full assessment of the facts and evidence in this case, it is appropriate that such fresh hearing is returned to the First-tier Tribunal. I maintain as a finding of fact, which is no longer in dispute, that the Appellant is indeed the biological mother of the Sponsor son in this case.

No anonymity direction is made.

Signed  Date 18/1/18

Deputy Upper Tribunal Judge Lever